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6 Attorneys for Complainant

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
7 DEPARTMENT OF CONSUMER AFFAIRS
8 STATE OF CALIFORNIA

9 In the Matter of the Accusation Against:

Case No. AC-2005-17 (Hori)

10 KPMG Peat Marwick, LLP
725 South Figueroa Street
Los Angeles, CA 90071
11 CPA Partnership Certificate No. PAR 157

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER
DAVID A. HORI, CPA 68236**

12 Bryan E. Palbaum
800 South Shamrock Avenue
13 Monrovia, CA 91016
Certified Public Accountant
14 Certificate No. CPA 51655

15 John Ming Wong
6252 Forester Drive
16 Huntington Beach, CA 92648
Certified Public Accountant
17 Certificate No. CPA 45405

18 Kenneth B. Janeski
355 So. Grand Avenue
19 Los Angeles, CA 90071
Certified Public Accountant
20 Certificate No. CPA 20116

21 **David Akio Hori**
400 E. Van Buren Street
22 **Phoenix, AZ 85004**
Certified Public Accountant
23 **Certificate No. CPA 68236**

24 Roland William ("Bill") Carroll, Jr.
540 San Geronio Street
25 San Diego, CA 92106
Certified Public Accountant
26 Certificate No. CPA 14338,

27 Respondents.

28 In the interest of a prompt settlement of this matter, consistent with the public interest and

1 the responsibilities of the California Board of Accountancy of the Department of Consumer
2 Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order
3 which will be submitted to the Board for approval and adoption as the final disposition of the
4 Accusation filed herein as it relates to Respondent David A. Hori (Case No. 2005-17).

5 **PARTIES AND JURISDICTION**

6 1. Carol Sigmann, Complainant, is the Executive Officer of the California Board of
7 Accountancy (the "Board"). She brought this action solely in her official capacity and is
8 represented in this matter by Bill Lockyer, Attorney General of the State of California, and by
9 Jeanne C. Werner, Deputy Attorney General.

10 2. On or about January 20, 1995, the Board issued Certified Public Accountant
11 Certificate No. CPA 68236 to David Akio Hori ("Respondent Hori"). The certificate is renewed
12 through November 30, 2006, and has not been the subject of prior Board discipline. Respondent
13 Hori is represented in this proceeding by Joseph T. McLaughlin and Susan K. Leach of Heller,
14 Ehrman, White & McAuliffe LLP.

15 3. The term "Accusation" refers to the Accusation on file in Board case Nos. AC-
16 2005-13 through AC-2005-17 and AC-2005-20, but as used herein refers only to the charges
17 against Respondent Hori. Similarly, this stipulation addresses all charges and matters in the
18 Accusation as they relate to Respondent Hori, and does not purport to deal with other
19 respondents. This stipulation bears Board Case No. 2005-17.

20 4. The Accusation was filed before the California Board of Accountancy,
21 Department of Consumer Affairs, and Case No. AC-2005-17 is currently pending against
22 Respondent Hori. The Accusation and all other statutorily required documents were properly
23 served on Respondent Hori, and Respondent timely filed his Notice of Defense contesting the
24 Accusation. A copy of the Accusation is attached as Exhibit A and incorporated herein by
25 reference. The parties stipulate that the Board has jurisdiction in this matter.

26 **WAIVERS & CONTINGENCY**

27 5. Respondent Hori has carefully read, fully discussed with counsel, and understands
28 the charges and allegations in the Accusation as they apply to him in Case No. AC-2005-17.

1 Respondent has also carefully read, fully discussed with counsel, and understands the effects of
2 this Stipulated Settlement.

3 6. Respondent is fully aware of his legal rights in this matter, including the right to a
4 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
5 his own expense; the right to confront and cross-examine the witnesses against him; the right to
6 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to
7 compel the attendance of witnesses and the production of documents; the right to reconsideration
8 and court review of an adverse decision; and all other rights accorded by the California
9 Administrative Procedure Act and other applicable laws. Respondent voluntarily, knowingly,
10 and intelligently waives and gives up each and every right set forth above.

11 7. It is understood that in signing this stipulation rather than further contesting the
12 Accusation, Respondent Hori is voluntarily consenting to the adoption of this Stipulated
13 Settlement as the Board's Decision in Case No. 2005-17, enabling the Board of Accountancy of
14 the State of California to issue the following order without further legal process. Respondent
15 Hori represents that no tender, offer, promise, threat or inducement of any kind whatsoever have
16 been made by the Board or any member, officer, agent or representative thereof in consideration
17 of this offer or otherwise to induce him to so consent.

18 8. This stipulation shall be subject to approval by the Board. Respondent Hori
19 understands and agrees that counsel for Complainant and the staff of the Board may
20 communicate directly with the Board regarding this stipulation and settlement, without notice to
21 or participation by Respondent or its counsel. By signing the Stipulated Settlement, Respondent
22 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
23 prior to the time the Board considers and acts upon it.

24 9. If the Board does not adopt this stipulation as its Decision and Order, the
25 Stipulated Settlement shall be withdrawn. It shall be of no force or effect, except for this
26 paragraph. It shall have no evidentiary value, shall be inadmissible in any legal action between
27 the parties, and shall not be relied upon or introduced in any disciplinary, or other, action or
28 proceeding by either party hereto. In the event that the Stipulated Settlement is not adopted,

1 nothing recited herein shall be construed as a waiver of Respondent's right to a hearing on the
2 truth of the Accusation's charges, or a waiver of any other right, including those rights expressly
3 waived in the Stipulated Settlement. Communications pursuant to this paragraph, and
4 consideration of this matter, shall not disqualify the Board or other persons from future
5 participation in this or any other matter affecting Respondent. Respondent agrees that should
6 the Board reject the Stipulated Settlement and if this case proceeds to hearing, Respondent will
7 assert no claim that the Board was prejudiced by its review and discussion of the Stipulated
8 Settlement or of any records related hereto. In the event that the Stipulated Settlement is not
9 adopted, Respondent is not precluded from filing a Special Notice of Defense within fifteen days
10 of his counsel being notified in writing that the Stipulated Settlement was not adopted.

11 **ADMISSIONS AND FURTHER STIPULATIONS BETWEEN THE PARTIES**

12 10. The parties acknowledge that the basis for the Accusation's alleged violations of
13 California Business and Professions Code¹ Section 5100, subparagraphs (h) and (l) is the
14 decision and Order entered by the United States Securities and Exchange Commission ("SEC" or
15 "Commission") on October 20, 2004, in its case *In the Matter of KPMG LLP, Bryan E. Palbaum,*
16 *CPA, John M. Wong, CPA, Kenneth B. Janeski, CPA, David A. Hori, CPA, Respondent*
17 *(Administrative Proceeding File No. 3-11714)*(see paragraph 22 of the Accusation).² Respondent
18 herein, David A. Hori, without admitting or denying the findings in the SEC Order, except as to
19 the Commission's jurisdiction over him and the subject matter of the Commission's proceedings,
20 consented, effective October 20, 2004, to the entry of an *Order Instituting Public Administrative*
21 *Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings,*
22 *and Imposing Remedial Sanctions* ("Order").

23 11. Respondent Hori admits the matters alleged in paragraphs 21, 22, and 40, and
24 that the SEC's Order, described above and in the Accusation, provides the basis for violations of
25

26 1. The California Business and Professions Code is referred to hereinafter as the "Code."

27 2. The Order is also filed as "Securities Exchange Act of 1934 Release No. 50564 /
28 October 20, 2004" and "Accounting And Auditing Enforcement Release No. 2125 / October 20,
2004."

1 violations of Code Section 5100, subparagraphs (h) and (I), as alleged in paragraphs 41 and 43 of
2 the Accusation, as they pertain to him.

3 12. Respondent Hori agrees that his CPA Certificate is subject to discipline under
4 Code Sections 5100(h) and 5100(I) as set forth in the Accusation, and agrees to be bound by the
5 Board's imposition of discipline as set forth in the disciplinary order below. Respondent further
6 agrees not to take any action or make any public statement that creates, or tends to create, the
7 impression that any of the matters set forth in the Stipulated Settlement, Order and Decision are
8 without a factual basis. It is not the intent of the board, however, to prevent Respondent from
9 testifying or responding truthfully in civil litigation or regulatory matters, including where he is
10 required to do so by any court of law or regulatory body.

11 13. The parties understand and agree that facsimile copies of this Stipulated
12 Settlement, including facsimile signatures thereto, shall have the same force and effect as the
13 originals.

14 14. The Board, in accepting this stipulation, is foregoing its right to institute further
15 disciplinary proceedings, including filing charges in addition to the charges contained in the
16 Accusation, against Respondent's license based upon conduct arising out of the audits and
17 reviews of the financial statements of Gemstar for the period covered in the Accusation.
18 However, in the event that Case Nos. AC-2005-13 through AC-2005-17, and AC-2005-20, are
19 not resolved effective April 1, 2005, the Board reserves the right to initiate or continue
20 investigations and administrative proceedings related to the conduct of Board licensees who may
21 have been involved in the acts or omissions underlying the SEC's allegations and Order as well
22 as any other violations of the Accountancy Act which may have occurred by Board licensee(s) in
23 the Gemstar engagements. In those circumstances, Respondent voluntarily agrees to fully
24 cooperate with, and, upon reasonable notice, make himself available to, the Board and its
25 designees, without the necessity of a subpoena, in any investigation of other Board licensees
26 regarding the Gemstar engagements, including, but not limited to, the providing of interviews,
27 statements, affidavits, declarations, and any other documents or other types of information
28 requested, consistent with the requirements of confidentiality and law. Respondent, if called to

1 do so, shall cooperate with the Board and shall, upon reasonable notice, testify at any subsequent
2 administrative or civil proceeding if asked to do so by the Board. Finally, this provision shall not
3 have the effect of limiting in any way the Board's monitoring of Respondent's compliance with
4 the terms of this order.

5 **IN CONSIDERATION OF THE FOREGOING** admissions and stipulations, the
6 parties agree that the Board may, without further notice or formal proceeding, issue and enter the
7 following Disciplinary Order:

8 **DISCIPLINARY ORDER**

9 IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. CPA 68236
10 to Respondent David Akio Hori is revoked. However, the revocation is stayed and Respondent is
11 placed on probation for three (3) years on the following terms and conditions.

12 1. **Actual Suspension.** Certified Public Accountant Certificate No. CPA 68236
13 issued to David Akio Hori is suspended for forty-five (45) days. During the period of
14 suspension, Respondent shall engage in no activities for which certification as a Certified Public
15 Accountant or Public Accountant is required as described in Business and Professions Code,
16 Division 3, Chapter 1, Section 5051.

17 2. **Obey All Laws.** Respondent shall obey all federal, California, other
18 states' and local laws, including those rules relating to the practice of public accountancy in
19 California.

20 3. **Submit Written Reports.** Respondent shall submit, within ten (10) days
21 of completion of the quarter, written reports to the Board on a form obtained from the Board.
22 The Respondent shall submit, under penalty of perjury, such other written reports, declarations,
23 and verification of actions as are required. These reports, declarations, and/or verifications shall
24 contain statements relative to Respondent's compliance with all the terms and conditions of
25 probation. Respondent shall immediately execute all release of information forms as may be
26 required by the Board or its representatives to confirm Respondent's compliance with the terms
27 and conditions of probation.

28 4. **Personal Appearances.** Respondent shall, during the period of probation,

1 appear in person at interviews/meetings as directed by the Board or its designated
2 representatives, provided such notification is accomplished in a timely manner.

3 5. **Comply With Probation.** Respondent shall fully comply with the terms and
4 conditions of the probation imposed by the Board and shall cooperate fully with representatives
5 of the Board of Accountancy in its monitoring and investigation of the Respondent's compliance
6 with probation terms and conditions.

7 6. **Cooperate with Board.** Respondent will cooperate with Board investigations as
8 provided in paragraph 14 above.

9 7. **Practice Investigation.** Respondent shall be subject to, and shall permit,
10 practice investigation of the Respondent's professional practice. Such a practice investigation
11 shall be conducted by representatives of the Board, provided notification of such review is
12 accomplished in a timely manner. However, Respondent acknowledges that the Board may
13 confirm, without notice to Respondent, that Respondent is in compliance with Business and
14 Professions Code Section 5051 during the suspension period.

15 8. **Comply With Citations.** Respondent shall comply with all final orders resulting
16 from citations issued by the Board of Accountancy.

17 9. **Out-of-State Residence/Practice.** During any periods during which the
18 Respondent continues to reside and/or to practice outside California, no obligation imposed
19 herein, including requirements to file written reports and meet in person, shall be suspended or
20 otherwise affected by such periods of out-of-state residency or practice except at the written
21 direction of the Board. Respondent must notify the Board in writing of changes in the nature or
22 location of his current practice within 30 days of such a change.

23 10. **Active License Status.** Respondent shall at all times maintain an active license
24 status with the Board, including during any period of suspension. If the license is expired at the
25 time the Board's decision becomes effective, the license must be renewed within 30 days of the
26 effective date of the decision.

27 11. **Violation of Probation.** If Respondent violates probation in any respect, the
28 Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and

1 carry out the disciplinary order that was stayed. If an accusation or a petition to revoke probation
2 is filed against Respondent during probation, the Board shall have continuing jurisdiction until
3 the matter is final, and the period of probation shall be extended until the matter is final.

4 12. **Completion of Probation.** Upon successful completion of probation,
5 Respondent's license will be fully restored.

6
7 **ACCEPTANCE**


8 I have carefully read the above Stipulated Settlement and Disciplinary Order and
9 have fully discussed it with my counsel, Joseph T. McLaughlin and Susan K. Leach of Heller,
10 Ehrman, White & McAuliffe LLP. I understand the stipulation and the effect it will have on my
11 CPA Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
12 knowingly, and intelligently, and agree to be bound by the Decision and Order of the California
13 Board of Accountancy.

14 DATED: March 9, 2005.

15 
16 DAVID AKIO HORI
17 Respondent

18 I have read and fully discussed with Respondent David A. Hori the terms and
19 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
20 Order. I approve its form and content.

21 DATED: March 10, 2005.

22 
23 JOSEPH T. MCLAUGHLIN
24 SUSAN K. LEACH
25 Heller Ehrman White & McAuliffe LLP
26 Attorneys for Respondent


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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

DATED: March 10, 2005.

BILL LOCKYER, Attorney General
of the State of California


JEANNE C. WERNER
Deputy Attorney General
Attorneys for Complainant

MAN

**BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. AC-2005-17 (Hori)

KPMG LLP
CPA Partnership Certificate No. PAR 157

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Kenneth B. Janeski
CPA Certificate No. CPA 20116

David Akio Hori
CPA Certificate No. CPA 68236

Roland William ("Bill") Carroll, Jr.
CPA Certificate No. CPA 14338,

Respondents.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on April 1, 2005.

It is so ORDERED on March 25, 2005.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS